

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Action Case No. <u>5:19-cv-00928-XR</u>
)	
v.)	
)	
KEVIN SIEGERT,)	
)	
)	
Defendant.)	
_____)	

PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

COMES NOW, Plaintiff, Malibu Media, LLC (“Plaintiff”), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 55, hereby files its Motion for Entry of Default Judgment (“Motion”) against Defendant, Kevin Siegert (“Defendant”), and in support thereof, states:

1. This is a case for copyright infringement arising under United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).
2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).
3. Plaintiff used proven IP address geolocation technology which has consistently worked in similar cases to ensure that Defendant’s acts of copyright infringement occurred using an Internet Protocol address (“IP address”) traced to a physical address located within this District, and therefore this Court has personal jurisdiction over defendant because (i) Defendant committed the tortious conduct in this State, (ii) Defendant resides in this State, and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State.

4. Indeed, Defendant resides in the State of Texas at 7630 Wood Hollow Drive, Apt. 137, Austin, TX 78731-2252.

5. On August 2, 2019, Plaintiff filed its Complaint in this action [CM/ECF 1].

6. On January 15, 2020, Plaintiff filed its Amended Complaint [CM/ECF 10].

7. Service of summons and Amended Complaint was obtained as follows [CM/ECF 13]:

Defendant

Date of Service, Type of Service

Kevin Siegert

February 1, 2020, Individual Service

8. The Affidavit of Service details that the process server personally served the Defendant at his usual place of abode by delivering a copy of the summons and amended complaint [CM/ECF 13]. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit “A”.

9. According to Texas Rules of Civil Procedure 106(a)(1), service of process on an individual is accomplished by delivering a true copy to the defendant. Thus, service is appropriate.

10. Defendant has failed to plead or otherwise defend himself against Plaintiff’s Amended Complaint.

11. A Clerk’s Certificate of Default was issued as to Defendant, Kevin Siegert on February 26, 2020 [CM/ECF 17].

12. Defendant is not a minor or an otherwise incompetent person. *See* Decl. of Paul S. Beik, Esq.

13. This Motion is based on the allegations in Plaintiff’s Amended Complaint. Defendant has admitted all of the facts alleged therein by failing to plead or otherwise respond to

the Amended Complaint. *See Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (“The defendant, by his default, admits the plaintiff’s well-pleaded allegations of fact [and] is concluded on those facts by the judgment”).

14. This Motion is further based on the facts attested to in the Declaration of Paul S. Beik, Esq. and the Memorandum of Points and Authorities in Support of Motion for Entry of Default Judgment filed contemporaneously herewith, and the record of the proceedings and papers on file herein. These materials are sufficient to justify the requested relief.

WHEREFORE, Plaintiff, Malibu Media, LLC, respectfully requests entry of a default judgment in favor of Plaintiff and against Defendant, Kevin Siegert, in the form of the Proposed Default Judgment and Permanent Injunction attached hereto, and for such other and further relief this Court deems just and proper.

Dated: February 28, 2020

Respectfully submitted,

By: /s/ Paul S. Beik
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

I further certify that some of the participants in the case are not CM/ECF users. Pursuant to Local Rule 5.5, I have mailed the foregoing document via U.S. Mail certified mail (return receipt requested) to the persons set forth in the Service List below.

By: /s/ Paul S. Beik
PAUL S. BEIK

Service List

Kevin Siegert
7630 Wood Hollow Drive
Apt. 137
Austin, TX 78731-2252.

